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IN THE

Supreme Court of the United States

October Term, 1962.

No. 228.

SAMUEL FREEDMAN, et al.,
Petitioners,

v.

PHILADELPHIA TERMINALS AUCTION COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Brief for Respondent in Opposition.

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No. 228.

SAMUEL FREEDMAN, ET AL.,
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PHILADELPHIA TERMINALS AUCTION COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

QUESTIONS PRESENTED.

1. Was the jury warranted in finding that petitioners (auction buyers) were not injured in their business or property by paying terminal charges to respondent fruit auction company as a uniform term of all sales?

2. Are such charges unlawful payments of commission, brokerage or other compensation under the brokerage clause of the Robinson-Patman Act, 15 U. S. C. § 13(c)?

3. If such charges otherwise constitute such brokerage, are they not lawful under the Act as charges for services rendered?

4. Were such payments received by the auction company in the course of interstate commerce under the Robinson-Patman Act when they were received as a term of sale at a local auction of fruit for intrastate delivery and the interstate transportation of the fruit had ceased prior to the auction sale?

STATEMENT OF THE CASE.

This is a spurious class suit brought by members of the Philadelphia Fruit Auction Buyers Association seeking treble damages for an alleged violation of Section 2(c) of the Clayton Act as amended by the Robinson-Patman Act. The claims of petitioners Freedman, Dankel and Rosengarten were severed from the claims of others for trial. The jury returned a special verdict in favor of respondent. Thereafter the United States District Court for the Eastern District of Pennsylvania (Hon. Francis L. Van Dusen, J.) denied petitioners' motion for judgment n.o.v. or new trial, and the United States Court of Appeals for the Third Circuit affirmed.

Respondent conducts public auction sales of fresh fruit shipped into Philadelphia. Its salesrooms are located at railroad terminals where carloads of fruit are delivered and unloaded for sale. Petitioners are buyers who attend the auction sales on every business day and purchase fruit.

From November 22, 1948 to October 17, 1956, respondent collected from petitioners and all other auction buyers a terminal charge of a specified amount per package for each kind of fruit purchased at auction. These terminal charges were uniform as to all buyers and were part of the pre-announced terms of sale. The terminal charges were instituted by respondent after the railroads had been granted permission by the Interstate Commerce Commission to impose an unloading charge effective on November 1, 1948, for the railroads' service of unloading the fruit at the terminal. This unloading charge was a separate charge, additional to the railroads' line-haul freight. The railroad unloading charges were imposed against the entire carload based on tonnage. They were reduced by the Interstate Commerce Commission, effective on July 3, 1952, and at that time the respondent reduced its per package terminal charges to auction buyers. The unloading charges were cancelled on Octo-

ber 17, 1956 by order of the Commission, and respondent's terminal charges were discontinued on that date.[1]

The decision of respondent's officers to institute terminal charges was occasioned by the fact that the New York Fruit Auction Company had imposed similar charges the previous week, after railroad unloading charges had become effective as to fruit sold at auction in New York (186a). Historically, the freight charges to New York and to Philadelphia for a carload of fruit were identical, regardless of whether the fruit was shipped from California or Florida (185a). Respondent's officers believed that, if shippers to the Philadelphia market were required to pay an additional railroad unloading charge which they were not required to pay on shipments to New York, fruit would be diverted to New York and there would be a substantial decrease in volume of fruit coming into Philadelphia to be sold at auction. Such a diversion of supplies would have injured not only defendant's business but also the business of the auction buyers, who depended on the Philadelphia market (185a-187a).

Terminal charges were computed at a per package rate in an amount sufficient to cover the tonnage unloading charges paid to the railroads and also to cover the additional clerical, bookkeeping and collection costs incurred by respondent. Respondent also endeavored to have as few different rates of terminal charges as were practicable and to have most of the charges at a round number of cents per package. The rates of the terminal charges were announced to petitioners and all buyers, and all buyers knew

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1. The history of this litigation is set forth in *Unloading Charges on Fruits and Vegetables at New York and Philadelphia*, 272 I. C. C. 648 (1948), 286 I. C. C. 119 (1952), 298 I. C. C. 637 (1956); and *Florida Citrus Commission v. United States*, 114 F. Supp. 420 (S. D. Fla. 1953), reversed sub nom. *Secretary of Agriculture v. United States*, 347 U. S. 645 (1954). Respondent participated in this litigation as one of the protestants.

the rates of the unloading charges which respondent paid to the railroads.[2]

Petitioners paid the terminal charges on respondent's invoices to them, as did all the other auction buyers on the same uniform terms. Each of these petitioners testified that the existence of the terminal charges, the amount of which was known prior to all the sales, was taken into consideration in the bidding (83a, 95a-96a, 133a-134a).

Petitioners Freedman and Dankel conducted their business as buying brokers only. They did not make purchases for their own account for resale, but bought only on behalf of principals, who reimbursed them for the entire price paid by them to respondent for the merchandise including all terminal charges, and who paid them a commission for their services, usually 10¢ per box. In their own billings to the principals, Freedman and Dankel included the amount of the terminal charges in the total price paid for the goods, without separate itemization. After 1952, when terminal charges on certain packages were 3½¢ and 4½¢ per package, these two petitioners (with the consent of their principals) "rounded out" the charges to 4¢ and 5¢ respectively, thus collecting from their principals a greater terminal charge than they had paid to respondent and retaining the difference as profit (50a-52a, 93a-94a).

Some of the principals for whom Freedman and Dankel purchased at auction had their own credit with respondent, and their charges were paid directly by the principals to respondent. The Court charged that terminal charges paid directly by the principals could be considered in support of petitioners' claim that their business or property had been injured by the terminal charges.

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2. The difference between terminal charges collected and railroad unloading charges paid by respondent was complained of by petitioner only in Count II of the Complaint, which charged that respondent had fraudulently represented to the buyers that the amount of terminal charges billed to them was equivalent to the amount of unloading charges paid to the railroad. Count II was dismissed by the trial judge and no appeal was taken from this dismissal.

Petitioner Rosengarten was primarily a wholesaler.[3] In setting his price on resale, his usual mark-up was about 25¢ or 35¢ per package above his costs, including terminal charges and hauling (127a-132a). Such mark-up had not changed much for the thirty-five years that he had been in business, which included periods when terminal charges were in effect and periods when there were no terminal charges (130a-131a). The records of Rosengarten's business showed that his gross sales and gross profits increased during the years while terminal charges were in effect, particularly after 1951. His profit percentage on sales also increased during those years (Ex. D-60, 325a).

Petitioners did not show any decrease in their income from their business during the time that terminal charges were in effect, and did not show any loss of income attributable to terminal charges (see, *e.g.*, 34a-36a). They contended, however, that their income would have risen during 1948 to 1956, because other people's incomes increased in that period (37a). For the period 1948 to 1956, respondent showed that trucks took a large part of the fresh fruit transportation business from the railroads (Ex. D-17A, 317a), that Philadelphia rail unloads of most kinds of fruit decreased (Ex. D-46A, 318a), that per capita consumption of fresh fruits in the United States declined (Ex. D-48, 319a) while per capita consumption of frozen fruits and juices increased (Ex. D-49, 320a), that chain stores were obtaining an increased share of the retail market at the expense of independent dealers such as those with whom petitioners dealt (Ex. D-58, 324a), and that the sales of fruit through respondent auction company decreased both in number of carlots handled (191a) and in dollar volume of sales (192a).

While the auction market conducted by respondent is the only place in Philadelphia where fresh fruit arriving by rail is sold at auction in less than carload lots, it is in com-

3. He made 95% of his purchases at auction for his own account for resale and 5% as broker for other principals (119a). As to the latter, he also was reimbursed fully by his principals (135a-136a).

petition with the wholesale market where wholesale dealers receive carloads and truckloads and resell in smaller lots (40a). Only a small amount of the fruit arriving in Philadelphia by truck was sold through respondent (250a). The bulk of the large purchases made by chain stores were received by direct carload or truckload shipments to them and not through respondent (46a-48a).

Respondent provides facilities and performs a variety of services incidental to its operation of a market place where fresh fruit is sold at auction. Its auctioneers and clerks sell fruit of competing sellers on the same terms, and all buyers are subject to the same terms (175a). Auctions are conducted according to uniform rules well known by the buyers and by the sellers or their representatives in attendance (69a-71a).

In addition to providing the services of auctioneers and clerks and the use of an auction salesroom, respondent arranges with railroads for placing cars at platform locations and for the unloading, which was performed by railroad employees. Respondent opens sample boxes for inspection by buyers before sale, and prints a daily catalogue given to buyers. Respondent's checkers see that merchandise is delivered on the platform to the rightful buyer after sale. Respondent pays the rail charges, renders an account of sales to sellers and remits to sellers the net sums due them after deduction of rail charges and respondent's commissions. Respondent extends credit to buyers, assumes the credit risk, sends itemized invoices and collects from buyers.

Petitioners alleged that the terminal charges were in violation of Sections 1 and 2 of the Sherman Act and of Section 2(c) of the Clayton Act, and that they were imposed by fraudulent misrepresentations and coercion. The trial judge dismissed the fraud count. Petitioners withdrew the claim under the Sherman Act and the claim for restitution for coercion (251a), leaving only their claim under Section 2(c) of the Clayton Act.

Petitioners did not rely at trial solely on the contention that they were entitled to automatic recovery of the amount

of terminal charges paid. At petitioners' instance, the trial judge left to the jury the questions whether the terminal charges resulted in any reduction of their volume of business or prevented them from raising their commission rates or injured their businesses in any other way. Petitioners have conceded in the District Court that the jury's verdict conclusively determined all of these questions against them and did not raise these questions on appeal.

The Court submitted to the jury for their special verdict the questions of whether the terminal charges were payments within the terms of the Act and whether each of the petitioners sustained any injury by reason of the terminal charges and the amount thereof. The jury answered all the questions in the negative (326a).

ARGUMENT.

A. The Decision Below Was Clearly Correct.

Under Section 4 of the Clayton Act, 15 U. S. C. § 15, petitioners must prove injury to business or property in order to recover damages for violation of the antitrust laws. The record amply supports the jury's finding that petitioners were not injured. Their income was not diminished by the terminal charges. Petitioners Freedman and Dankel, who are brokers, were reimbursed in full by their principals for the total charges paid by them to respondent. In fact, after 1952, when terminal charges on certain types of fruit were 3½¢ and 4½¢ per box, Freedman and Dankel billed these charges to their principals at 4¢ and 5¢ respectively, thus making a profit on them. Petitioner Rosengarten made most of his purchases on his own account as a wholesale dealer.[4] The dollar amount of his mark-up was the same when the terminal charges were in effect as when they were not. In addition, Rosengarten's records showed that his profit margin increased during the period when terminal charges were in effect, not only in gross amount but also in ratio to his total sales. The Petition for Certiorari does not deny that petitioners were fully reimbursed.[5]

Nevertheless, petitioners assert that injury to their business or property was automatically shown by payment of terminal charges, and that therefore they were entitled to recover threefold the amount paid to respondent or at least threefold the amount by which their payments ex-

4. Where he acted as a broker, Rosengarten (like Freedman and Dankel) was fully reimbursed by his principals.

5. The entire argument assumes that petitioners paid more by reason of the terminal charges invoiced to buyers than they would have paid without it. In fact, however, their total payments were not increased because their bids were decreased by the amount of the terminal charges they knew to be payable (See *infra*, p. 12).

ceeded respondent's payments of unloading charges to the railroads. Their principal reliance has been on a decision in the same Circuit, *Hanover Shoe, Inc. v. United Shoe Machinery Corporation*, 185 F. Supp. 826 (M. D. Pa. 1960), affirmed per curiam 281 F. 2d 481 (3d Cir. 1960), cert. denied 364 U. S. 901 (1960). Both the District Court and the Court of Appeals held that the *Hanover Shoe* case is not applicable to the present case.

With respect to respondent's argument that petitioners were not damaged because they were reimbursed, the trial court instructed the jury "You have got to consider that argument, of course, along with all the other evidence" (290a). This charge, the *Hanover Shoe* case and the decision of the court below conform to a series of cases (the so-called "oil jobber cases") which hold that when a complaining middleman has been reimbursed, he has had no injury to his trade or business within the meaning of Section 4 of the Clayton Act:

Twin Ports Oil Co. v. Pure Oil Co., 119 F. 2d 747 (8th Cir. 1941), cert. denied 314 U. S. 644 (1941);

Northwestern Oil Co. v. Socony-Vacuum Oil Co., Inc., 138 F. 2d 967 (7th Cir. 1943), cert. denied 321 U. S. 792 (1944);

Clark Oil Co. v. Phillips Petroleum Co., 148 F. 2d 580 (8th Cir. 1945), cert. denied 326 U. S. 734 (1945);

Kidd v. Esso Standard Oil Company, 295 F. 2d 497 (6th Cir. 1961);

Leonard v. Socony-Vacuum Oil Co., Inc., 42 F. Supp. 369 (W. D. Wis. 1942), appeal dismissed on other grounds 130 F. 2d 535 (7th Cir. 1942).

The decision below is further supported by the history of the bill which became the Robinson-Patman Act. As the

District Court observed, when this bill came to the House (S. 3154, 74th Cong., 2d Sess.) it contained the following provision:

> "the measure of damages for any violation of this section shall, where the fact of damage is shown, and in the absence of proof of greater damage, be presumed to be the pecuniary amount or equivalent of the prohibited discrimination, payment, or grant involved in such violation."

This provision was eliminated from the bill in conference.

The effect of the deletion of this provision from the bill was described by Judge Learned Hand in *Enterprise Industries, Inc. v. The Texas Company*, 240 F. 2d 457, 460 (2d Cir. 1957), cert. denied 353 U. S. 965 (1957), in which a gasoline service station operator sought treble damages for discriminatory prices paid to defendant. The Court assumed that plaintiff had proved a violation of the Act but stated "we do not think that it proved the amount of its damages, or indeed that it suffered any damages at all", 240 F. 2d at 458. Judge Hand said:

> ". . . [I]n the case at bar we have as little means of knowing whether or how far the plaintiff passed on to car owners any difference in the price charged it, as we have of knowing how far the addition affected the gallonage that it sold. . . ." 240 F. 2d at 459.

> "At all events the statute, should not be read as creating any presumption that 'where the fact of damage is shown * * * the pecuniary amount or equivalent of the prohibited discrimination' is the proper 'measure of damages.' Exactly that was a provision in the bill, when it came from the Senate to the House (S. 3154, 74th Cong., 2d Sess.), and it was eliminated in conference. This action becomes particularly persuasive in contrast with the retention of that part of § 13(b) that

> imposes a burden of proof on the seller as to the effect of a 'discrimination.' Congress obviously did not wish the seller to be under a double burden, as soon as the buyer proved that he had been charged a higher price than any of his competitors; especially the burden of proving the negative upon an issue as to which the seller could know nothing and the buyer everything. Indeed, that was a burden that Congress might well hesitate to impose in an action in which the seller must not only make good the buyer's loss, but also pay him a fine in double the amount of his loss. It is fair to suppose that, if Congress had thought the evil of price discrimination so great as to require so drastic a procedural support, it would have made its purpose more clear." [Footnote omitted.] 240 F. 2d at 460.

As the language of the proposed provision indicates, it was applicable to "any violation of this section" and not merely to a violation of Section 2(a), the subsection involved in the *Enterprise Industries* case.

Moreover, there was evidence which would have warranted the jury in finding that petitioners did not pay any more money as the result of the terminal charges than they would have paid in the absence thereof. Indeed, the nature of an auction sale virtually compels such a finding. A buyer at an auction sale cannot be required to pay and absorb a charge which is imposed uniformly on all buyers as part of the pre-announced terms of sale. The reason is that the buyers make the price, not the sellers or the auctioneer, and they make the price by their competitive bidding which takes the charge into account. Insofar as the buyers were concerned, the known terminal charge merely changed the language of the auction bidding. If there was a 10¢ terminal charge, a bid of $4.00 meant an offer to pay $4.10. In the absence of the charge, the bidder would say "$4.10". Petitioners themselves testified that they took the terminal charge into consideration when bidding (83a, 95a-96a, 133a-134a).

Petitioners were admittedly reimbursed for all that they paid. But there was actually no finding or basis for finding that the terminal charges caused any increase in their total payments. The incidence of the charges was in fact borne by the sellers who received that much less of the total amount the buyers paid.

B. The Writ Should Be Denied Because the Terminal Charges Were Lawful.

1. The terminal charges were not unlawful brokerage under Section 2(c) of the Clayton Act because they were uniform terms of sale to all auction buyers and could not result in any discrimination, direct or indirect. This Court has stated that a uniform reduction of brokerage on all sales made through a broker would not violate the Act, *Federal Trade Commission v. Henry Broch & Co.*, 363 U. S. 166, 176 (1960):

> ". . . A price reduction based upon alleged savings in brokerage expenses is an 'allowance in lieu of brokerage' when given only to favored customers. Had respondent, for example, agreed to accept a 3% commission on all sales to all buyers there plainly would be no room for finding that the price reductions were violations of § 2(c). Neither the legislative history nor the purposes of the Act would require such an absurd result, and neither the Commission nor the courts have ever suggested it. . . ."

If the terminal charges were brokerage (which is denied), it is equally true that a uniform imposition of brokerage on all sales made through respondent does not violate the Act.

2. The terminal charges were not received as "a commission, brokerage or other compensation" within the meaning of the Act. Respondent is not a broker, and it does not render brokerage services. The terminal charges were paid to cover the cost to respondent of an unloading service performed by the railroads and, accordingly, were charges for handling the goods. The brokerage clause deals

exclusively with compensation for personal "selling services"[6] and the Act has never been construed to forbid buyers to pay for services relating to the physical handling of the goods. Sellers necessarily include in their prices the amounts previously incurred for services relating to the goods, including transportation, storage, loading and unloading. Such charges may be reflected in the total sales price or may be separately stated, and are clearly lawful when they are not discriminatory. If it is assumed that respondent acted as the agent for the sellers in paying the unloading charge and collecting the terminal charge from petitioners, the terminal charge does not become unlawful under the brokerage clause because it was received by the agent, unless it would be equally unlawful for the seller himself to receive it.

3. The terminal charges were not received by respondent as an agent, representative or intermediary acting for or under the control of the sellers. As an auctioneer, respondent dealt with all sellers as an independent contractor and on the same terms for the same services. The legislative history of the Act reveals that the brokerage clause was not intended to prohibit brokerage payments to genuinely independent intermediaries. The brokers in the present situation are petitioners, who purchase for their principals, and the receivers, who, on behalf of the growers, order respondent to sell the fruit. There is no warrant for applying *the brokerage clause to an auctioneer* or to the general services and facilities rendered by an auction exchange. It is a well-known method of selling merchandise, and there is no suggestion in the legislative history of the Act that Congress was concerned with practices involved

6. "In the consideration of the brokerage clause it will simplify the problem of its construction and meaning, if at all times it is borne in mind that this sub-section deals exclusively with personal 'selling' services and compensation therefor. Other types of services and facilities furnished are dealt with in sub-sections 2(d) and 2(e) of the Act." *The Robinson-Patman Act*, by Wright Patman, The Ronald Press Company, 1938, at p. 99.

in auction sales, or that Congress found any abuses, actual or potential, in the conduct of auction sales or the practice of an auction exchange in making charges to sellers and buyers.

4. The terminal auction and financial services rendered by respondent (described in the statement of facts) justified the terminal charges under Section 2(c), if the provision were otherwise applicable, because they were made "for services rendered in connection with the sale or purchase of goods, wares, or merchandise."

5. The payment of terminal charges to respondent was not made in the course of interstate commerce as required by the Robinson-Patman Act.[7] The sales which take place at the auction operated by respondent are purely local in character, and the services of respondent are rendered locally. Interstate transportation of the merchandise has come to an end and it is sold at auction for local delivery in Philadelphia to the buyer without the use of any instrumentality of interstate commerce. Accordingly, the transactions complained of are not in the course of such commerce. *Hopkins v. United States*, 171 U. S. 578 (1898); *Moore v. New York Cotton Exchange*, 270 U. S. 593 (1926).

C. The Reasons Relied Upon by Petitioners for Allowance of the Writ Do Not Justify Its Issuance.

1. Petitioners claim that the decision below conflicts with the following decisions of this Court:

> *Thomsen v. Cayser*, 243 U. S. 66 (1917);
> *Chattanooga Foundry and Pipe Works v. City of Atlanta*, 203 U. S. 390 (1906);
> *Southern Pacific Co. v. Darnell-Taenzer Lumber Co.*, 245 U. S. 531 (1918).

No such conflict exists.

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7. *Lewis v. Shell Oil Co.*, 50 F. Supp. 547, 549 (N. D. Ill. 1943); *Sears, Roebuck & Company v. Blade*, 110 F. Supp. 96, 101 (S. D. Cal. 1953).

The *Southern Pacific* case involved freight rate overcharges in violation of the Interstate Commerce Act. This Court held that there can be a recovery of such an overcharge without proof of pecuniary loss and that the only one who can recover is the one in privity with the carrier. This Court has held that such cases are not applicable to an action for damages under the antitrust laws. *Keogh v. Chicago & Northwestern Railway Company*, 260 U. S. 156, 164-165 (1922).

In *Thomsen v. Cayser* and *Chattanooga Foundry and Pipe Works v. City of Atlanta*, the plaintiffs incurred pecuniary losses and juries had so found. It did not appear that they had been reimbursed for their losses. Judgments in accordance with the verdicts were upheld. In the present case the jury has found that petitioners did not incur any injury.

In three of the oil jobbers cases relied upon by the court below, petitions for certiorari were filed. In all of those cases petitioners made the same argument based upon the freight overcharge decisions of this Court that petitioners make in the present case. Nonetheless, certiorari was denied.[8]

2. Petitioners assert a conflict between *Elizabeth Arden Sales Corporation v. Gus Blass Co.*, 150 F. 2d 988 (8th Cir. 1945), cert. denied 326 U. S. 773 (1945), and *Sun Cosmetic Shoppe, Inc. v. Elizabeth Arden Sales Corporation*, 178 F. 2d 150 (2d Cir. 1949). As Judge Learned Hand has noted,[9] the holding in the *Gus Blass* case, which is relied

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8. *Northwestern Oil Co. v. Socony-Vacuum Oil Co., Inc.*, 138 F. 2d 967 (7th Cir. 1943), cert. denied 321 U. S. 792 (1944) (Petition for Certiorari, pp. 14-16); *Twin Ports Oil Co. v. Pure Oil Co.*, 119 F. 2d 747 (8th Cir. 1941), cert. denied 314 U. S. 644 (1941) (Petition for Certiorari, p. 3); *Clark Oil Co. v. Phillips Petroleum Co.*, 148 F. 2d 580 (8th Cir. 1945), cert. denied 326 U. S. 734 (1945) (Petition for Certiorari, p. 20).

9. *Enterprise Industries, Inc. v. The Texas Company*, 240 F. 2d 457, 459 (2d Cir. 1957), cert. denied 353 U. S. 965 (1957).

upon by petitioners to establish a conflict was overruled in *American Can Co. v. Russellville Canning Co.*, 191 F. 2d 38 (8th Cir. 1951). In any event, petitioner does not assert a conflict between the *Gus Blass* decision and the decision of the court below.

3. Petitioners assert that the decision of the court below erroneously distinguishes one of its own prior decisions, *Hanover Shoe, Inc. v. United Shoe Machinery Corporation*, 185 F. Supp. 826 (M. D. Pa. 1960), affirmed per curiam 281 F. 2d 481 (3d Cir. 1960), cert. denied 364 U. S. 901 (1960); and that the *Hanover Shoe* decision conflicted with the decisions of the Seventh and Eighth Circuits in the oil jobber cases. What the decision below actually does is to harmonize its previous decision in the *Hanover Shoe* case with the oil jobber cases. A conflict between the *Hanover Shoe* decision and the oil jobber cases was asserted in United Shoe Machinery's petition for certiorari in the *Hanover Shoe* case (pp. 7-14), but certiorari was denied.

4. Petitioners assert that the decision of the court below will mean the virtual end of private enforcement of the Robinson-Patman Act. This contention is devoid of merit. What petitioners are arguing for is an arbitrary rule of damages which would eliminate the requirement of the statute that the fact of injury to business or property be proved. Petitioners are advocating a rule which would permit recovery even where no injury had been sustained. If petitioners' view were correct, mere proof of the payment of brokerage without more would automatically resolve in liability for three times the amount of the brokerage without regard to whether any damage has in fact been inflicted and even where it is clearly shown that no damage has occurred. There is no warrant for such a result.

CONCLUSION.

For the reasons stated herein, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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